

STATE OF NEW YORK

1462

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to state contracts for interior design services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 136-a of the state finance law, as amended by chap-
2 ter 405 of the laws of 2018, is amended to read as follows:

3 § 136-a. Contracts for architectural, engineering, interior design,
4 geological, landscape architecture and surveying services. 1. As used in
5 this section: the term "professional firm" shall be defined as any indi-
6 vidual or sole proprietorship, partnership, corporation, association or
7 other legal entity permitted by law to practice the professions of
8 architecture, engineering, interior design, geology, landscape architec-
9 ture or surveying.

10 The term "state department" shall be defined as those state government
11 departments, divisions or commissions empowered by the state to enter
12 into contractual agreements on behalf of the state of New York.

13 2. It is the policy of New York state to negotiate contracts for
14 architectural and/or engineering services and/or interior design
15 services and/or geological and/or landscape architecture and/or survey-
16 ing services on the basis of demonstrated competence and qualification
17 for the type of professional services required and at fair and reason-
18 able fees.

19 3. (i) In the procurement of architectural, engineering, interior
20 design, geological, landscape architecture and surveying services, the
21 requiring state department shall encourage professional firms engaged in
22 the lawful practice of the profession to submit an annual statement of
23 qualifications and performance data. The requiring state department for
24 each proposed project shall evaluate current statements of qualifica-
25 tions and performance data on file with the department. If desired, the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 requiring state department may conduct discussions with three or more
2 professional firms regarding anticipated design concepts and proposed
3 methods of approach to the assignment. The state department shall
4 select, in order of preference, based upon criteria established by the
5 requiring state department, no less than three professional firms deemed
6 to be the most highly qualified to provide the services required.

7 (ii) The annual statement of qualifications for interior design
8 services shall include information demonstrating that such services are
9 provided by an interior designer possessing certification pursuant to
10 article one hundred sixty-one of the education law or provided under the
11 supervision of a certified interior designer.

12 4. The requiring state department shall negotiate a contract with the
13 highest qualified professional firm for architectural and/or engineering
14 services and/or interior design services and/or geological service
15 and/or landscape architecture and/or surveying services at compensation
16 which the department determines in writing to be fair and reasonable to
17 the state of New York. In making this decision, the department shall
18 take into account the estimated value of the services to be rendered,
19 including the costs, the scope, complexity, and professional nature
20 thereof. The department shall not refuse to negotiate with a profes-
21 sional firm solely because the ratio of the "allowable indirect costs"
22 to direct labor costs of the professional firm or the hourly labor rate
23 in any labor category of the professional firm exceeds a limitation
24 generally set by the department in the determination of the reasonable-
25 ness of the estimated cost of services to be rendered by the profes-
26 sional firm, but rather the department should also consider the reason-
27 ableness of cost based on the total estimated cost of the service of the
28 professional firm which should include, among other things, all the
29 direct labor costs of the professional firm for such services plus all
30 "allowable indirect costs," other direct costs, and negotiated profit of
31 the professional firm. "Allowable indirect costs" of a professional firm
32 are defined as those costs generally associated with overhead which
33 cannot be specifically identified with a single project or contract and
34 are considered reasonable and allowable under specific state contract or
35 allowability limits. Should the requiring state department be unable to
36 negotiate a satisfactory contract with the professional firm considered
37 to be the most qualified, at a fee the department determines to be fair
38 and reasonable to the state of New York, negotiations with that profes-
39 sional firm shall be formally terminated. The requiring state department
40 shall then undertake negotiations with the second most qualified profes-
41 sional firm. Failing accord with the second most qualified professional
42 firm, the department shall formally terminate negotiations. The requir-
43 ing state department shall then undertake negotiations with the third
44 most qualified professional firm. Should the requiring state department
45 be unable to negotiate a satisfactory contract with any of the selected
46 professional firms, it shall select additional professional firms in
47 order of their competence and qualification and it shall continue nego-
48 tiations in accordance with this section until an agreement is reached.

49 5. This legislation shall only apply to engineering and/or architec-
50 tural services and/or interior design services and/or geological and/or
51 landscape architecture and/or surveying services in excess of twenty-
52 five thousand dollars.

53 § 2. This act shall take effect on the ninetieth day after it shall
54 have become a law.